

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA
AND THE STATE OF TEXAS; Ex
rel. THOMAS HEADEN III,

Civil Action No. 4:18-cv-00773

Plaintiffs,

FILED UNDER SEAL

v.

ABUNDANT LIFE THERAPEUTIC
SERVICES TEXAS, LLC; JOHN
FORD; AND JOHN DOES (1-50)
INCLUSIVE;

Defendants.

PLAINTIFF'S SURREPLY TO DEFENDANTS' MOTION TO DISMISS

Comes now, Plaintiff, Thomas Headen III, by and through counsel, and respectfully files his Surreply to oppose Defendants' Motion to Dismiss. Plaintiff only wishes to clarify that the AKS statute prohibits the activity alleged by Plaintiff in this suit. Defendants' activities which included paying individuals for the purpose of increased services reimbursed by federal healthcare programs is prohibited. To be sure, Plaintiff's claims contain facial plausibility and include allegations that Defendant paid for the arrangement of Defendant's direct exposure (as well as provided gifts and free services), unlike their competitors, to patients whose services were reimbursed by federal healthcare programs. Furthermore, while Defendant's complain of a mischaracterization of the arguments in its brief by Plaintiff, it failed to elaborate or point out the basis for its position. Interestingly, Defendants took this approach though it prematurely filed its reply with ample amount of time remaining

before its reply brief was even due. More importantly, Plaintiff does not even have enough detail upon which to respond. As such, the Court should reject its unsupported conclusion. See *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990)(“It is not enough to merely mention a possible argument in the most skeletal way, leaving the court to do counsels’ work, create the ossature for the argument, and put flesh on its bones”)(internal citations omitted). Based on the arguments and facts alleged, the Court should find Plaintiff’s claims survive dismissal at this stage.

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DATE: March 25th, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served on the parties via ecf: